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No. 210] NEW DELHI, FRIDAY, JULY 13, 1956

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 2nd July 1956

S.R.O. 1620.—In pursuance of the provisions of sub-section (1) of section 90 of the Representation of the People Act, 1951 (XLIII of 1951), the following election petition presented under section 81 thereof is published for information.

BEFORE THE ELECTION COMMISSION, NEW DELHI

ELECTION PETITION No. 2 of 1956

Shri Rikhab Chand son of Shri Deep Chandji Aryanagar, Ajmer—*Petitioner*,

Versus

Maulana Abdul Shakoor son of Shri Shujat Ali, residing at Inderkot, Ajmer—*Respondent*.

Election Petition under section 81 of the Representation of the People Act, 1951.

The petitioner begs to submit as under:—

1. That the Hon'ble the President Union of India on 17th February 1956 *vide* Notification No. S.R.O. 430 published in the *Gazette of India*, Part II—Section 3 dated 17th February 1956, called upon the members of the Electoral College for the State of Ajmer (besides others) to elect a member for the Council of State on or before 31st March 1956.

2. That the Central Government on 17th February 1956, under sub-section 2 of Section 39 of the Representation of People Act, 1951 fixed 1st March 1956, as the last date for nomination and 5th March 1956 as the date for scrutiny.

3. That the Returning Officer for the State of Ajmer issued Notification on 17th February 1956 inviting nominations for the Council of State from the members of the Ajmer Legislative Assembly on or before 1st March 1956, between 11 a.m. to 3 p.m.

4. That the Petitioner filed his nominations for the seat in Council of State from Ajmer State, and is a duly nominated candidate for the same. His serial number is 228 in Ward No. 31 of the Ajmer Town, Ajmer North Parliamentary Constituency.

5. That the respondent filed three nomination papers for the said election. Nomination papers numbers one and two were filed by him on 28th February 1956, and the third on 1st March 1956.

6. That there were only two candidates who filed the nomination papers for the election, viz. the petitioner and the respondent.
7. That on 5th March 1956, the date fixed for scrutiny, the petitioner raised objections to the nomination papers of the respondent, besides others, on the ground that the respondent is in service of the School run by the Durgah Khwaja, Ajmer and is getting Rs. 100 per month. The said Durgah Khwaja is administered by the Government of India through the Administrator. Hence the respondent holds an office of profit under the Government of India, and as such disqualified to be chosen as member of the Council of State, under Article 102(1)(a) of the Constitution of India.
8. That the petitioner also objected to the nomination papers of the respondent on the ground that the Government of India has undertaken the administration of the Durgah Khwaja, Ajmer, and the respondent is serving as head of the School run by the Durgah Khwaja, Ajmer, which imparts education to the students, and as such he is disqualified under section 7(d) of the Representation of the People Act, 1951 as well.
9. That the respondent filed reply, but he neither admitted nor denied, whether he was getting Rs. 100 (One hundred) per month as stated above.
10. That the Durgah Khwaja Sahib (Emergency Provisions) Act, 1950, (Act XVIII of 1950) was in force upto 29th February 1956 and was replaced by Durgah Khwaja Sahib Act XXXVI of 1956 which came into force from 1st March 1956.
11. That the Petitioner examined one witness Munshi Siraj Mohammed to support his contention, besides examining himself before the Returning Officer, while the respondent neither examined himself, nor any witness, but produced a letter from the (Administrator) Nazim Durgah Khwaja, Ajmer, dated 5th March 1956.
12. That the learned Returning Officer, after hearing arguments passed the order on 6th March 1956, holding that so far as 1st and 2nd nomination papers of the respondent are concerned, he is holding an office of profit, and rejected the said nomination papers, and as for the 3rd nomination paper of the respondent, which was filed on 1st March 1956, the Returning Officer held that as the New Durgah Act XXXVI of 1956 has come into force on 1st March 1956, hence the respondent is not holding an office of profit under the New Act, and accepted the third nomination paper.
13. That the Election took place on 22nd March 1956, and the respondent was declared elected.
14. That the result of the Election has been published in the *Gazette of India* Extraordinary, Part II—Section 3, dated 31st March 1956.
1. That the petitioner claims that the election of the respondent is void, and that the petitioner has been duly elected on the following amongst other grounds:—
 - (a) That the respondent is Mohatmim or Manager in the School run by the Durgah Khwaja, Ajmer, known as "Madarsa Usmania Durgah Khwaja Sahib, Akbari Masjid, Ajmer", and is getting Rupees one Hundred per month. The Durgah Khwaja, Ajmer, is administered by the Government of India, and as such the respondent is holding an office of profit under the Government of India, and is disqualified to be chosen as a member of Council of State under section 102(1)(a) of the Constitution of India.
 - (b) That the Government of India has undertaken the performance of the services of the administration of the Durgah of Khwaja Moinuddin Chishti, which includes the imparting of education, and the respondent has share or interest in the performance thereof, and as such, he is disqualified under section 7(d) of the Representation of People Act No. XLIII of 1951.
 - (c) That the learned Returning Officer while passing orders on the scrutiny of the nomination papers of the respondent, acted in contravention of the provisions of section 36 sub-clause (3) of the Representation of People Act, 1951, as the orders on each of the

nomination papers have to be passed separately, and in the case of the rejection of the first nomination paper under section 36(2) of the said Act, the nomination of the candidate ought to have been refused. The Returning Officer having rejected the 1st nomination paper and also the second, acted contrary to law in accepting the 3rd nomination paper of the respondent.

- (d) That the respondent was appointed as a teacher about twelve months ago viz. in May 1955, under the Durgah Emergency Provisions Act 1950, and as such, his services continue to be governed by the said Act, and he was disqualified to be chosen as member of the Parliament under Article 102(i)(a) of the Constitution of India.
- (e) That the learned Returning Officer while passing the orders ignored the provisions of section 6 of the General Clauses Act, whereby respondent's rights and liabilities with respect to his services continue to be governed by the Durgah Emergency Provisions Act, 1950, and thereby he is holding an office of profit.
- (f) That the respondent on 28th February 1956 having already proceeded to get himself nominated as a candidate for the Council of State, and holding an office of profit on that date, then any subsequent event, or coming into force of any Act before the date of scrutiny, cannot remove the disqualification, if he was so disqualified on the date of 1st nomination paper. This is without prejudice to the contention that even under the New Act XXXVI of 1956 the respondent holds an office of profit.
- (g) That the learned Returning Officer erred and acted illegally in holding that the respondent does not hold the office of profit under the New Durgah Act XXXVI of 1956.
- (h) That even under the New Durgah Act, XXXVI of 1956 the Durgah Khwaja, Ajmer, is administered by the Government of India through a nominated Committee, and the 1st and present Nazim is also nominated by the Central Government, hence the respondent who is in service in the school run and administered by the Durgah Khwaja, Ajmer, and getting Rupees one hundred per month, holds an office of profit under the Government of India.
- (i) That even the orders passed by the Durgah Committee under the New Act, have the force of decree and executable as such by any Civil Court as a decree of the Court.
- (j) That there is a greater control of the Government of India over the services as well as the administration and funds of the Durgah Khwaja, Ajmer, under the New Act XXXVI of 1956.
- (k) That the learned Returning Officer erred in non-complying with the provisions of Article 102(1)(a) of the Constitution of India, as well as ignored the provisions of section 36(3) of the Representation of People Act 1951, which has occasioned grave illegality.
- (l) That the learned Returning Officer, by not correctly applying the provisions of Article 102(1)(a) of the Constitution of India, and section 36 of the Representation of People Act in interpreting the provisions of the Durgah Emergency Provisions Act 1950, the New Durgah Act XXXVI of 1956, and the General Clauses Act, erred in accepting the 3rd nomination paper of the respondent and wrongly decided that the respondent is not holding office of profit, which has materially affected the result of election.
- (m) That if the Constitution of India, and the aforesaid Acts, were correctly interpreted by the Returning Officer, the nomination of the respondent should have been rejected, and the petitioner being the only validly nominated candidate, should have been declared elected unopposed.
- (n) That the petitioner being the only validly nominated candidate and the vote caste in favour of the respondent, if held disqualified are thrown away, and the petitioner has received the majority of valid votes or rather all the valid votes.
- (o) That the result of the election has been materially affected by the non-compliance and incorrect interpretation of the provisions of the Constitution of India, the Representation of People Act, 1951, the Durgah Acts and the General Clauses Act.

16. That the petitioner has deposited Rs. 1000 as security deposit for the petition. The receipt is attached herewith.

It is, therefore, prayed:—

- (i) that the election of the respondent be declared void and the petitioner be declared duly elected.
- (ii) costs may be allowed against the respondent.
- (iii) any other relief suitable to the occasion may also be granted.

Dated 2nd May 1956.

(Sd.) Rikhab Chand.

Verification

I, Rikhab Chand son of Shri Deep Chandji, residing at Aryanagar, Ajmer, do hereby solemnly affirm that paras 1 to 14 and 16 are true to the best of my knowledge. That para 15 sub-para (a) from "that the respondent is Mohatmimto.....getting Rupees One Hundred per month" para 15 sub-para (b) the words "The respondent has share or interest in the performance thereof" and para 15 sub-para (d) that the respondent was, appointed.....to.....Emergency Provisions Act 1950' are correct according to the information obtained from the Durgah Office, one Shri Siraj Mohammad residing at Khadim Mohalla, Ajmer, the letter of the Nazim produced in the case, and from persons connected with the School which I have no reason to doubt. The para 15 sub-para. (b) from 'that the Government of India has undertaken.....to.....imparting of education', and from 'as such he is.....to.....Representation of People Act XLIII of 1951' and that para 15 sub-para (d) from 'As such his services.....to.....Constitution of India' and para 16 sub-para (c) and (e) to (o) are correct according to legal knowledge of the petitioner who is an Advocate and that 1st para of para 15 and the last paragraph are prayers.

2nd May 1956.

(Sd.) Rikhab Chand.

BEFORE THE ELECTION COMMISSION, NEW DELHI

ELECTION PETITION No. OF 1956

Shri Rikhab Chand son of Shri Deep Chandji, Aryanagar, Ajmer—*Petitioner.*
Versus

Maulana Abdul Shakoor son of Shri Shujat Ali, Inderkot, Ajmer—*Respondent.*
List of Illegallities and Irregularities committed in the Election.

The petitioner begs to submit that the following illegalities and irregularities were committed in the election:—

- (a) That the respondent is Mohatmim or manager in the School run by the Durgah Khawaja, Ajmer, known as "Madarsa Usmania Durgah Khawaja Sahib Akbari Masjid, Ajmer" and is getting Rupees one hundred per month. The Durgah Khawaja, Ajmer, is administered by the Government of India, and as such the respondent is holding an office of profit under the Government of India, and is disqualified to be chosen as a member of Council of State under Section 102(1)(a) of the Constitution of India.
- (b) That the Government of India has undertaken the performance of the services of administration of the Durgah and the Endowment of the Durgah of Khawaja Moinuddin Chishti which include the imparting of education, and the respondent has share or interest in the performance thereof, and as such he is disqualified under Section 7(d) of the Representation of People Act No. XLIII of 1951.
- (c) That the learned Returning Officer while passing orders on the scrutiny of the nomination papers of the respondent, acted in contravention of the provisions of Section 36 sub-clause (3) of the Representation of People Act, 1951 as the orders on each of the nomination papers have to be passed separately, and in the case of the rejection of the first nomination paper under Section 36(2)(b) of the said Act, the nomination of the candidate ought to have been refused, the Returning officer having rejected the 1st nomination paper and also the second, acted contrary to law in accepting the 3rd nomination paper of the respondent.

- ((d) That the respondent was appointed a teacher about twelve months ago viz. in May 1955, under the Durgah Emergency Provisions Act, 1950 and as such his services continue to be governed by the said Act, and he was disqualified to be chosen as member of parliament under Article 102(1)(a) of the Constitution of India.
- (e) That the learned Returning Officer while passing the orders ignored the provisions of Section 6 of the General Clauses Act, whereby respondent's rights and liabilities with respect to his services continue to be governed by the Durgah Emergency Provisions Act, 1950, and thereby he is holding an office of profit.
- (f) That the respondent on 28th February 1956 having already proceeded to get himself nominated as a candidate for the Council of State, and holding an office of profit on that date, then any subsequent event, or coming into force of any other Act before the date of scrutiny, cannot remove the disqualification, if he was so disqualified on the date of 1st nomination paper. This is without prejudice to the contention that even under the new Act XXXVI of 1956 the respondent holds an office of profit.
- (g) That the learned Returning Officer erred and acted illegally in holding that the respondent does not hold an office of profit under the New Durgah Act XXXVI of 1956.
- (h) That even under New Durgah Act, XXXVI of 1956 the Durgah Khwaja, Ajmer, is administered by the Government of India through a nominated Committee, and the 1st and present Nazim is also nominated by the Central Government, and the respondent who is in service in the School run and administered by the Durgah Khwaja, Ajmer and getting Rs 100 per month holds an office of profits under the Government of India.
- (i) That even the orders passed by the Durgah Committee under the New Act, have the force of decree and executable as such by any Civil Court as a decree of the court.
- (j) That there is a greater control of the Government of India over the services as well as the administration and funds of the Durgah Khwaja, Ajmer, under the New Act XXXVI of 1956.
- (k) That the learned Returning Officer erred in non-complying with the provisions of Article 102(1) of the Constitution of India, as well as ignored the provisions of Section 36 (3) of the Representation of People Act 1951 which has occasioned grave illegality.
- (l) That the learned Returning Officer, by not correctly applying the provisions of Article 102(1)(a) of the Constitution of India, and Section 36 of the Representation of People Act, in interpreting the provisions of the Durgah Emergency Provisions Act, 1950, the New Durgah Act XXXVI of 1956 and the General Clauses Act, erred in accepting the 3rd nomination paper of the respondent, and wrongly decided that the respondent is not holding office of profit which has materially affected the result of election.
- (m) That if the Constitution of India and the aforesaid Acts were correctly interpreted by the Returning Officer, the nomination of the respondent should have been rejected, and the petitioner being the only validly nominated candidate should have been declared elected unopposed.
- (n) That the petitioner being the only validly nominated candidate, the votes cast in favour of the respondent who if held disqualified are thrown away, and the petitioner has received the majority of valid votes or rather all the valid votes.
- (o) That the result of the election has been materially affected by the non-compliance and incorrect interpretation of the provisions of the Constitution of India, the Representation of People Act 1951, the Durgah Acts and the General Clauses Act.

Dated 2nd May 1956.

(Sd.) Rikhab Chand

I, Rikhab Chand son of Shri Deep Chand residing at Arvanagar, Ajmer do hereby solemnly affirm that para (a) from 'that the respondent is Mohaimim.togetting Rupees one hundred per month', para (b) the word the respondent has share or interest in the performance thereof and para

(d)' that the respondent was appointed.....to.....Durgah Emergency Provisions Act 1950, are correct according to the information obtained from the Durgah Office, one Shri Siraj Mohammad, residing at Khadim Mohalla, Ajmer, the letter of the Nazim produced in the case and from persons connected with the School which I have no reason to doubt. That para (a) from 'the Durgah Khwaja, Ajmer is administered to.....constitution of India' para (b) from "That the Government of India has undertaken.....to.... imparting education" and from 'as such he is.....to..... Representation of People Act No. XLIII of 1951' and (d) from as such his services.....to.....Constitution of India' and paras (c) and (e) to (o) are correct according to legal knowledge of the petitioner who is an advocate.

Dated 2nd May 1956.

(Sd.) Rikhab Chand,
C. JACOB, *Chairman*,
Election Tribunal, State of Ajmer.

[No. I-E.]
By Order,
DIN DAYAL,
for Chief Election Commissioner.